

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**
Washington, D.C. 20554

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In the Matter of)	
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Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review for)	CC Docket No. 94-1
Local Exchange Carriers)	
)	
Transport Rate Structure and Pricing)	CC Docket No. 91-213
)	
Usage of the Public Switched)	
Network by Information Service and)	CC Docket No. 96-263
Internet Access Providers)	

COMMENTS OF THE OHIO CONSUMERS' COUNSEL

Robert S. Tongren, in his capacity as the Ohio Consumers' Counsel (OCC), submits these comments to the Federal Communications Commission (Commission) in response to Release 96-488, the Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry (NPRM) in the above-captioned dockets. These comments are principally directed to CC Docket No. 96-262, *In the Matter of Access Charge Reform*.

The OCC represents the residential telecommunications consumers of the State of Ohio. These consumers are served by the interexchange carriers (IXCs) who pay the access charges that are the subject of this proceeding. The OCC also represents the residential customers of the local exchange carriers (LECs) who receive the revenue from access charges paid by the IXCs.

The Commission describes this proceeding as the last in a trilogy that began with local interconnection and universal service. Congress, in the Telecommunications Act of 1996 (the Act), *mandated* that the Commission address only local interconnection and universal service.¹ Clearly, Congress viewed access charges as either less important or less susceptible to a legislative solution than universal service and local interconnection. If the former, then the Commission should allow changes in access charges to follow, not precede, the establishment of effective local competition and universal service support funding, rather than taking any precipitous action.² If the latter, that equally bids the Commission to be cautious.

The Commission states its ultimate goal in this proceeding to be “adoption of revisions to our access charge rules that will foster competition for [incumbent LEC exchange access] service and enable marketplace forces to eliminate the need for price regulation of these services.” NPRM ¶ 14. Competition in the provision of local exchange access will come with the establishment of alternative local providers of such access. To be a true alternative provider of local access, a carrier must provide local service through its own facilities. Only with facilities-based competition will marketplace forces replace the ILECs’ local access monopoly.³

¹ Not once during its discussion of “Need for Access Reform” (NPRM ¶¶ 41-49) does the Commission assert any statutory requirement for the “reform.”

² Changes in access charges as a direct result of making universal service support mechanisms explicit, if required by the Act (NPRM ¶ 244), can be accomplished first, prior to any broader-based changes.

³ In addition, only with effective local service competition will consumers be able to escape LEC attempts to pass on the numerous inefficiencies that the IXCs contend should be stripped from access charges. NPRM ¶ 247.

Changes to the access charge rules will neither substantially foster competition for access nor drive the ability to deregulate access charges. However, the OCC would expect to see other benefits from changes in the access charge system, including lower end user toll rates. The OCC will therefore address the two approaches to "access charge reform" put forth by the Commission: The first is "market-based," while the second is "more prescriptive"; "[t]hese approaches could be employed singly or in combination." *Id.*

The OCC favors a combination of the two approaches. Given the lack of specific direction from Congress on this issue, however, it is entirely appropriate for this Commission to take, overall, a market-based approach.⁴ Once facilities-based competition develops, access charges should be driven down by the market.

To the extent that the Commission prescribes anything, it should mandate that the benefits of access charge reductions be passed on to end users. The Commission states, "High access charges may also keep long distance rates higher than they would otherwise be, which restricts demand for service and harms long-distance consumers." NPRM ¶ 42. Thus the benefits of lower access charges will accrue only if long-distance rates are lowered.

The flowthrough of access charge reductions should, indeed, be the centerpiece of any access charge regime. It is the public interest in a competitive marketplace that should

⁴ Unlike the detailed directions provided for local exchange competition and universal service support given in the Act, Congress said virtually nothing about interexchange access charges. Instead, Congress prohibited deaveraging of end user interexchange rates. Sec. 254(g).

drive such reductions. The public interest is in greater efficiencies and lower prices, not in higher profits for interexchange carriers.

Flowthrough of access charge reductions has been an important component of regulation in at least four states. In Maryland, AT&T and MCI have committed to flowthrough.⁵ In New York, the Public Service Commission has required a one-time rate reduction for AT&T to reflect reductions in intrastate access charges. *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of AT&T Communications of New York, Inc. for Telephone Service*, New York PSC, 168 P.U.R.4th 371 (March 7, 1996). The North Carolina Utilities Commission has required a *dollar-for-dollar* IXC rate reduction to reflect access charge reductions. *Re Bell South Telecommunications, Inc. et al.*, North Carolina UC, 170 P.U.R.4th 153 (June 25, 1996).

In Ohio, we have a commitment from AT&T, MCI, and Sprint to pass through the impacts of a substantial reduction in Ameritech Ohio's intrastate access charges. *In the Matter of the Implementation of Substitute Senate Bill 306 or Substitute House Bill 734 of the 121st General Assembly*, PUCO Case No. 96-532-TP-UNC, Settlement Agreement (May 20, 1996).

Whether this Commission adopts the market force approach or the prescriptive regulatory approach to access charge reductions, it should seriously consider a

⁵ "AT&T Passes on Access Cut," State Telephone Regulation Report (December 26, 1996) at 10; "MCI to cut long distance rates within Maryland; 17% reduction to save callers about \$6.5 million a year," *The Baltimore Sun* (January 14, 1997) at 1C.

prescriptive approach to pass-through of those reductions. Otherwise, the public benefit from changes in the access charge system will be minimal. This supposedly more "economically efficient" result will benefit the IXC's, not the consumers they serve.

The Commission states, as a reason for a more prescriptive approach to access charges, that "[m]arket forces alone may not be sufficient to drive access rates to forward-looking economic costs." NPRM ¶ 16. Equally, market forces may not be (indeed, have not been⁶) sufficient to drive end user toll rates closer to forward looking economic costs. Thus prescription on the access charge level should certainly be matched by prescription on the end user rate level.

According to the Commission, the need for access charge reform is driven by the fact that "IXCs and incumbent LECs ... agree that current per minute interstate access charges exceed economically efficient levels and that, consequently, per-minute access charges must be reduced." NPRM ¶ 41. If interstate access charges exceed economically efficient levels, then the IXC's end user toll rates which pass through those charges cannot be economically efficient, either.

Thus the OCC would propose that to whatever extent this Commission mandates the decrease of the access charges that the IXC's pay, whether using a "regulatory" or "market-based" approach, the Commission should also mandate corresponding reductions

⁶ The fact of recent lock-step rate increases by the three major IXC's -- *in the absence of any claim of increased costs* -- shows the lack of effective competition in the toll market. There is no reason to assume that the productivity gains displayed by LEC's -- *see* NPRM ¶ 232 -- are not met or bettered by the IXC's. Indeed, the Commission's decision to remove the lower service band indices (NPRM ¶ 305) is a further recognition of the industry's declining cost structure.

in end user rates.⁷ Otherwise, the Commission is merely adding to IXC margins. Such is neither an economically efficient nor an equitable result. The public interest in this area is as much about equity as about efficiency.

With regard to the level of access charges, both equity and efficiency require consideration of shared and common costs in setting access charges. The IXCs have defined the "economically efficient level" as "at their forward looking economic cost" (NPRM ¶ 47). The Commission and the PUCO have defined such forward-looking costs, in both the unbundled network element and termination charge contexts, as including an allocation of shared and common costs.⁸ There is no reason why economically efficient interstate access charges should not include a reasonable contribution to shared and common costs. In the real world, all sustainable prices contribute to the shared and common costs of the firm.

In the access charge regime, the principal shared cost is the cost of the loop. As the Commission has used the terms in the *Interconnection Order* (at ¶ 694), the loop is a shared cost of local and toll service, not a common cost of operating the firm as a whole. The loop is an ILEC investment *without which* provision of interexchange service would

⁷ The Federal-State Joint Board has proposed that, to the extent that the CCLC is reduced, such reductions be flowed through to end users through SLC reductions, and to toll users through "lower interstate CCL charges." Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision (November 1996) ("*Recommended Decision*") at ¶ 218. Such CCL reductions could not benefit toll users without flowthrough.

⁸ 51 C.F.R. § 51.505; *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, PUCO Case No. 95-845-TP-COI, Entry on Rehearing (November 7, 1996), Appendix A at 39-40.

be impossible. Interexchange calling requires and uses the loop. Therefore, some portion of the cost of the loop must be reflected in the rates that interexchange carriers pay to use the loop to originate and terminate their interexchange calls.

The Commission is concerned with establishing "interstate access rates based on some form of a TSLRIC pricing method." NPRM ¶ 222. This is the same concern the Commission has shown for unbundled network elements in the *Interconnection Order*. It is interesting that the Commission is willing to entrust end user rates to the "competitive" long distance market, but proposes regulatory intervention for carrier-to-carrier rates.

The Commission seeks opinion on whether ILECs should be allowed "to recover any of the NTS costs of the loop from IXCs on a traffic-sensitive basis." (NPRM ¶¶ 60, 72) To the extent that the Commission considers real-world economics to be worth considering here, it should be recalled that businesses recover "NTS" costs through "usage-sensitive charges" all the time. The cost of the grocery store is built in to the cost of Post Toasties. Neither are we charged admission to the store's cereal aisle. The cost of the auto factory is also built in to the price of each of the factory's products that is used. These are "overheads," and an entire branch of accounting -- cost accounting -- addresses this topic.

As another aspect of rate structure, the Commission requests comment on whether "incumbent LECs should be permitted to deaverage geographically rates for access elements." NPRM ¶ 183. Actually, geographic *averaging* of access charges serves a specific purpose of the Act, to ensure that "the rates charged by providers of

interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas." Sec. 254(g).

In ¶ 67 of the NPRM, the Commission asks "whether we should permit or require LECs to deaverage SLCs as part of the baseline rate structure that would be imposed on all incumbent price cap ILECs." Specifically, the Commission seeks comment "on whether geographic averaging of SLCs is an implicit subsidy that is inconsistent with the requirements of section 254(e)." *Id.* The SLC represents an end user's contribution to the interstate portion of the cost of the loop; the only way to ensure true matching of prices with costs would be to do a customer-specific study. For instance, under any averaged structure other than customer-specific, a customer with a short loop will be "subsidizing" a customer with a long loop. Neither economic efficiency nor equity requires such specificity in ratemaking.

The Commission also asks "whether carriers ... should be permitted to apportion access charges between carrier and end user according to marketplace pressures." NPRM ¶ 98. Where and when end users have a true competitive alternative -- between a carrier that does impose end user long distance access charges and a carrier that does not -- there may be such "marketplace pressures." The OCC submits, however, that the SLC *currently* apportions access costs between carriers and end users. To the extent that residential consumers remain captive customers, allowing LECs to impose an increased share of costs

upon residential end users preserves monopoly profits. Thus the SLC should stay as is (or be reduced, as the Federal-State Joint Board has recommended⁹).

The Commission sets out the interstate and intrastate revenues of LECs in Table 1 (NPRM ¶ 29). As shown in the Attachment hereto, switched access charges represent 12% of the LECs' revenue stream, while the SLC represents 8%. (The percentages for Ohio are consistent with the national results.) The Commission offers no reason why these proportions are inappropriate.

In conclusion, the OCC notes that the Commission asks for comment on the need for transition mechanisms. (NPRM ¶ 115) The concept of gradualism is a fundamental precept of regulation. As the Commission states, "price cap service categories were developed both to protect ratepayers from precipitous changes in the prices for incumbent LEC services, and to prevent incumbent LECs from disadvantaging one class of ratepayers to the benefit of another." NPRM ¶ 211. These were valid goals in the price cap context, and remain valid in this proceeding. The Commission *cannot* instantaneously transition a regulated market to a deregulated market. Neither law nor any regulatory principle demands it. As explained above, if properly conducted, access charge reform can occur without major disruptions to the network and its consumers (carriers and end users alike). Part of such reform must include a requirement that the IXCs reduce their end user rates commensurate with this reduction in their costs. An efficient, yet equitable, transition to a competitive market should be the Commission's goal here.

⁹ *Recommended Decision* ¶ 754.

Comments of the Ohio Consumers' Counsel
January 29, 1997

Respectfully submitted,
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A handwritten signature in black ink, appearing to read "David C. Bergmann", written over a horizontal line.

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ATTACHMENT

Table 1 (NPRM ¶ 29) shows national ILEC revenues (in *billions*, rounded to the nearest hundred million). These can be compared to Ohio ILEC revenues as follows:

Category	National Data		Ohio Data	
	Revenues (\$)	Revenues (%)	Revenues (\$)	Revenues (%)
INTERSTATE REVENUES				
Subscriber Line Charge	\$7.1	8%	\$.29	7%
Switched Access Charges	\$10.8	12%	\$.39	10%
Other Interstate Revenue	\$5.5	6%	\$.28	7%
Total Interstate Revenues	\$23.4	26%	\$.95	24%
INTRASTATE REVENUES				
Basic Local Exchange Service	\$32.0	35%	\$1.6	39%
Intrastate Access	\$7.3	8%	\$.4	10%
Other Intrastate Services	\$28.0	31%	\$1.1	27%
Total Intrastate Revenues	\$67.4	74%	\$3.0	76%
TOTAL REGULATED REVENUES	\$90.8	100%	\$3.95	100%